

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In re CASSAVA SCIENCES, INC.
SECURITIES LITIGATION

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Master File No. 1:21-cv-00751-DAE

CLASS ACTION

This Document Relates To:

ALL ACTIONS

JOINT ADVISORY

Pursuant to the Court's February 27, 2024 Order (ECF 141) that the Parties¹ file a Joint Advisory by March 8, 2024 setting forth their agreed or proposed deadlines on: (1) motions to amend or supplement pleadings or to join additional parties; and (2) reply expert reports, the Parties advise as follows:

1. Whereas Plaintiffs previously expressed the potential need for reply expert reports should "a rebuttal report [be] provided by an expert whose expertise is on a different subject matter than the opposing party's opening expert report" (ECF 102 at 4) and Defendants previously expressed that "[t]o the extent the parties believe that reply expert reports are warranted following an exchange of opening and rebuttal reports, the parties can seek to modify the scheduling order at that time" (*id.* at 5), the Parties now agree that no deadline for reply expert reports is needed at this time.

2. The Parties were unable to reach agreement on a deadline on motions to amend or supplement pleadings or to join additional parties, and their differing proposals are set forth below:

Plaintiffs' Proposal. The deadline for motions to amend or supplement pleadings or to join additional parties should be set thirty (30) days after the close of fact discovery so that the Parties have the ability to incorporate new information learned during discovery. For example, in *Del. Cnty. Emps. Ret. Sys. v. Cabot Oil & Gas Corp.*, 2024 WL 83503 (S.D. Tex. Jan. 8, 2024), another securities fraud class action, plaintiffs successfully moved to amend their complaint, at a deadline which coincided with the close of fact discovery, to add additional misleading statements and corrective disclosures based on information learned in discovery. Therefore, this deadline should not be set prior to the Parties having the opportunity to take fulsome discovery. An

¹ The "Parties" refers to lead plaintiff Mohammad Bozorgi and additional plaintiffs Ken Calderone and Manohar K. Rao (collectively, "Plaintiffs") together with defendants Cassava Sciences, Inc., Remi Barbier, Eric Schoen, and Lindsay Burns (collectively, "Defendants").

additional “good cause” standard under Rule 16 should not be unnecessarily imposed on Plaintiffs seeking to conform pleadings to the evidence already taken, especially when a motion to amend under Rule 15 already addresses Defendants’ concerns, considering, among other things, whether the amendment would “undu[ly] prejudice” Defendants. *Mayeaux v. La. Health Serv. & Indem. Co.*, 376 F.3d 420, 425 (5th Cir. 2004).

Defendants’ Proposal. The deadline for motions to amend or supplement pleadings or to join additional parties should be set sixty (60) days before the close of fact discovery. This will ensure that the existing parties, and any newly joined parties, have an adequate opportunity to conduct discovery regarding any new allegations or claims.

Importantly, setting a deadline to amend pleading or join additional parties before the close of fact discovery will not preclude either party from seeking to amend after discovery is closed. Instead, it will ensure that any party seeking such a late amendment will be held to the “good cause” standard for amending the Scheduling Order under Federal Rule of Civil Procedure 16(b)(4). *See S&W Enter. LLC v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 536 (5th Cir. 2003) (“Rule 16(b) governs amendment of pleadings after a scheduling order deadline has expired. Only upon the movant’s demonstration of good cause to modify the scheduling order will the more liberal standard of Rule 15(a) apply to the district court’s decision to grant or deny leave”). Allowing Plaintiffs to amend their claims or join new parties under the lenient standard of Federal Rule of Civil Procedure 15(a) after fact discovery is closed would prejudice Defendants by limiting Defendants’ opportunity to conduct discovery regarding new claims or parties. Alleviating that burden will require permitting additional discovery, which, under Rule 16(b)(4) requires a showing of good cause. The party seeking to amend the scope of its pleadings at such a late stage should bear that burden.

3. Based on Plaintiffs' recent Motion to Supplement their Complaint and ongoing conferrals regarding the scope of document discovery, Defendants have requested certain amendments to the Scheduling Order. The Parties have agreed that the class certification briefing schedule should be amended, with Defendants' Response due on June 21, 2024, and Plaintiffs' Reply due on August 16, 2024. The Parties will continue to meet and confer on whether any other amendments to the schedule are warranted, and will file any appropriate Motion to Amend the Scheduling Order subsequent to such conferrals.

DATED: March 8, 2024

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP

DANIEL S. DROSMAN (admitted *pro hac vice*)

RACHEL JENSEN (admitted *pro hac vice*)

KEVIN A. LAVELLE (admitted *pro hac vice*)

MEGAN A. ROSSI (admitted *pro hac vice*)

HEATHER GEIGER (admitted *pro hac vice*)

/s/ Kevin A. Lavelle

KEVIN A. LAVELLE

655 West Broadway, Suite 1900

San Diego, CA 92101

Telephone: 619/231-1058

619/231-7423 (fax)

dand@rgrdlaw.com

rachelj@rgrdlaw.com

klavelle@rgrdlaw.com

mrossi@rgrdlaw.com

hgeiger@rgrdlaw.com

Lead Counsel for Lead Plaintiff and Additional
Plaintiff Ken Calderone

KENDALL LAW GROUP, PLLC
JOE KENDALL (Texas Bar No. 11260700)
3811 Turtle Creek Blvd., Suite 825
Dallas, TX 75219
Telephone: 214/744-3000
214/744-3015 (fax)
jkendall@kendalllawgroup.com

Local Counsel for Lead Plaintiff and Additional
Plaintiff Ken Calderone

GLANCY PRONGAY & MURRAY LLP
CHARLES H. LINEHAN (admitted *pro hac vice*)
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: 310/201-9150
310/201-9160 (fax)
clinehan@glancylaw.com

Counsel for Additional Plaintiff Manohar K. Rao

DATED: March 8, 2024

/s/ Gregg Costa

Gregg Costa (Tx. Bar No. 24028160)
Trey Cox (Tx. Bar No. 24003722)
GIBSON, DUNN & CRUTCHER LLP
811 Main Street Suite 3000
Houston, TX 77002
Telephone: 346.718.6600
Facsimile: 346.718.6979
gcosta@gibsondunn.com
tcox@gibsondunn.com

Monica K. Loseman (admitted *pro hac vice*)
Scott Campbell (admitted *pro hac vice*)
John Turquet Bravard (admitted *pro hac*
vice)

GIBSON, DUNN & CRUTCHER LLP
1801 California Street
Denver, CO 80202-2642
Telephone: 303.298.5700
Facsimile: 303.298.5907
mloseman@gibsondunn.com
scampbell@gibsondunn.com
jturquetbravard@gibsondunn.com

Mary Beth Maloney (admitted *pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
Telephone: 212.351.4000
Facsimile: 212.351.6315
mmaloney@gibsondunn.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on March 8, 2024, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Kevin A. Lavelle

KEVIN A. LAVELLE

ROBBINS GELLER RUDMAN
& DOWD LLP

655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

Email: klavelle@rgrdlaw.com

Mailing Information for a Case 1:21-cv-00751-DAE In Re Cassava Sciences, Inc. Securities Litigation

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Ramzi Abadou**
ramzia@csgrr.com
- **Michael Albert**
malbert@rgrdlaw.com
- **Thomas E. Bilek**
tbilek@bileklaw.com,lmank@bileklaw.com
- **Mary K. Blasy**
mblasy@rgrdlaw.com,e_file_ny@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Jeffrey C. Block**
jeff@blockesq.com
- **Willie C. Briscoe**
wbriscoe@thebriscoelawfirm.com,tsims@thebriscoelawfirm.com
- **Warren T. Burns**
wburns@burnscharest.com,mkweik@burnscharest.com,jgravois@burnscharest.com,mvaleriano@burnscharest.com,twhiteside@burnscharest.com
- **Michael Scott Campbell**
scampbell@gibsondunn.com,rjanzen@gibsondunn.com,stafoya@gibsondunn.com
- **Stuart L. Cochran**
scochran@condontobin.com,lmedeles@condontobin.com
- **Gregg Jeffrey Costa**
gcosta@gibsondunn.com
- **John Thomas Cox , III**
tcox@gibsondunn.com,twesley@gibsondunn.com,LGadberry@gibsondunn.com,wcassidy@gibsondunn.com
- **Michael Dell'Angelo**
mdellangelo@bm.net,csimon@bm.net,jgionnette@bm.net
- **Daniel S. Drosman**
dand@rgrdlaw.com,tholindrake@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Bryan Fears**
fears@fnlawfirm.com,pcox@fnlawfirm.com,nprola@maceybankruptcylaw.com
- **William B. Federman**
wbf@federmanlaw.com,ngb@federmanlaw.com,law@federmanlaw.com
- **Michael I. Fistel , Jr**
michaelf@johnsonfistel.com,paralegal@johnsonfistel.com
- **Sammy Ford , IV**
sford@azalaw.com,rperez@azalaw.com,tzamora@azalaw.com,jwarshauer@azalaw.com
- **Claudia Wilson Frost**
cfrost@steptoe.com,casestream@ecf.courtdrive.com,phowell@orrick.com,dcmangingattorneysoffice@ecf.courtdrive.com,srenfro@orrick.com
- **Heather Geiger**
hschlesier@rgrdlaw.com
- **J. Alexander Hood , II**
ahood@pomlaw.com,abarbosa@pomlaw.com
- **B. Russell Horton**
rhorton@gbkh.com,kseabolt@gbkh.com,tmanassian@gbkh.com
- **Rachel L. Jensen**
rachelj@rgrdlaw.com,tdevries@rgrdlaw.com

- **Lewis S. Kahn**
lewis.kahn@ksfcounsel.com,ecf.filings@ksfcounsel.com
- **Joe Kendall**
jkendall@kendalllawgroup.com,administrator@kendalllawgroup.com
- **Natalie F. Lakosil**
nlakosil@rgrdlaw.com,e_file_sd@rgrdlaw.com,bengfelt@rgrdlaw.com
- **Kevin A. Lavelle**
klavelle@rgrdlaw.com,e_file_sd@rgrdlaw.com,bengfelt@rgrdlaw.com
- **Jeremy A. Lieberman**
jalieberman@pomlaw.com,disaacson@pomlaw.com
- **Charles H. Linehan**
CLinehan@glancylaw.com,info@glancylaw.com,charles-linehan-8383@ecf.pacerpro.com
- **Monica K. Loseman**
mloseman@gibsondunn.com,lapodaca@gibsondunn.com
- **Mary Beth Beth Maloney**
mmaloney@gibsondunn.com
- **Matthew Ryan McCarley**
mccarley@foresterhaynie.com,mccmat2000@yahoo.com,wage@foresterhaynie.com
- **Megan A. Rossi**
mrossi@rgrdlaw.com
- **Samuel H. Rudman**
srudman@rgrdlaw.com,e_file_ny@rgrdlaw.com,e_file_sd@rgrdlaw.com,bengfelt@rgrdlaw.com
- **John L. Turquet Bravard**
jturquetbravard@gibsondunn.com
- **Jordan Lyn Warshauer**
jwarshauer@azalaw.com,mrivers@azalaw.com,akeniston@azalaw.com
- **Braden Michael Wayne**
braden@swclaw.com,lisa@swclaw.com,jamie@swclaw.com
- **John A. Yanchunis**
jyanchunis@forthepeople.com,jcabezas@forthepeople.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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